

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT (the "Amendment") is made and entered into as of October 20, 2010, by and between (i) **1335 PICCARD LLC**, a Maryland limited liability company ("Landlord"), indirect successor in interest to SOLAR BUILDING ASSOCIATES ("SBA"), and (ii) **MONTGOMERY COUNTY, MARYLAND**, a body corporate and politic ("Tenant").

RECITALS

WHEREAS, Tenant and SBA, the predecessor-in-interest to Briarpath Properties, Inc., Landlord's immediate predecessor-in-interest, did enter into that certain Lease Agreement dated July 25, 1994, pursuant to which Tenant leased certain premises located at 1335 Piccard Drive, Rockville, Maryland (the "Leased Premises"), all as more particularly described in the Lease;

WHEREAS, Landlord and Tenant did enter into that certain First Amendment to Lease Agreement dated as of June 1, 2006 (the "First Amendment"), pursuant to which the parties extended the term of the Lease and made certain amendments and modifications thereto; and

WHEREAS, Landlord and Tenant desire to further extend the term of the Lease and to further amend and modify it.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged hereby, the parties mutually agree as follows:

1. **Recitals Incorporated; Certain Defined Terms.** The recitals set forth above are incorporated herein by this reference and shall be deemed terms and provisions hereof with the same force and effect as if fully set forth in this Paragraph 1. Capitalized terms that are not otherwise defined herein shall be deemed to have the same meanings herein as are ascribed to such terms in the Lease. As used herein, the "Lease" hereafter shall be deemed to mean the Lease, as amended by this Amendment.

2. **Extension of Lease.** Landlord and Tenant hereby agree to further extend the term of the Lease through June 30, 2016 so that the Extension Term will now expire on that date, in lieu of expiring on June 30, 2011, on the terms and conditions set forth in the Lease, inclusive of the amendments and modifications described below.

3. **Base Rent.** The annual Base Rent and the adjustments thereto specified in Paragraph 3 of the Lease as applicable to the remainder of the Extension Term, shall be as set forth in the table immediately below, it being agreed that commencing on the Adjusted Rent Commencement Date (as hereinafter defined), the annual Base Rent will be reduced from its level in effect immediately prior thereto. The Adjusted Rent Commencement Date shall be the first day of the first calendar month most immediately following the month during which Tenant shall have delivered to Landlord two (2) counterparts of this Amendment fully executed on behalf of Tenant.

<u>Lease Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
1/1/10 - 10/31/10*	\$657,559.04	\$54,796.59
11/1/10* - 10/31/11	\$646,250.04	\$53,854.17
11/1/11 - 10/31/12	\$665,637.60	\$55,469.80
11/1/12 - 10/31/13	\$685,606.68	\$57,133.89
11/1/13 - 10/31/14	\$706,174.92	\$58,847.91
11/1/14 - 10/31/15	\$727,360.20	\$60,613.35
11/1/15 - 6/30/16	\$749,181.00	\$62,431.75

4. **Real Estate Taxes.** The provisions of Paragraph 5 of the Lease shall remain in full force and effect, without modification of the Base Year, until the Adjusted Rent Commencement Date, and with respect to the fiscal year commencing July 1, 2010, Tenant shall, promptly after receipt of Landlord's invoice(s) therefor, reimburse Landlord for increased Real Estate Taxes, pro rated on a monthly basis, for the portion of such fiscal year prior to the Adjusted Rent Commencement Date, to the extent such Real Estate Taxes shall exceed the Real Estate Taxes for the Base Year. Effective on and as of the Adjusted Rent Commencement Date, the third sentence of Paragraph 5 shall be amended in its entirety so as to state as follows:

"The Base Year is hereby defined to be the period from July 1, 2010 through June 30, 2011."

5. **Rent Abatement.** Notwithstanding the provisions of Paragraph 3 above, the Monthly Base Rent shall be abated for the period not to exceed three (3) months, commencing on the Adjusted Rent Commencement Date and ending on January 31, 2011. If the Adjusted Rent Commencement Date shall not have occurred on or before January 1, 2011, there will be no abatement of Monthly Base Rent whatsoever. For example, (a) Landlord shall abate the first three (3) months of Monthly Base Rent, provided that Tenant shall have fully executed this Amendment and delivered two (2) counterparts so executed to Landlord on or before October 30, 2010; (b) Landlord shall abate the two (2) months of Monthly Base Rent, provided that Tenant shall have fully executed this Amendment and delivered two (2) counterparts so executed during the calendar month of November 2010 and (iii) Landlord shall abate the first month of Monthly Base Rent, provided Tenant shall have fully executed this Amendment and delivered two (2) counterparts so executed during the calendar month of December 2010. If Tenant shall not have executed and delivered such counterpart copies prior to January 1, 2011, then Landlord's offer to enter into this Amendment shall be withdrawn effective midnight on December 31, 2010, and Tenant's corresponding power to accept it shall thereupon terminate, in which event the Lease shall remain in effect in accordance with its then respective terms and conditions and shall expire on June 30, 2011.

** These dates, 10/31/10, 10/31/11, 10/31/12, 10/31/13, 10/31/14 and 10/31/15 and 11/1/10, 11/1/11, 11/1/12, 11/1/13, 11/1/14 and 11/1/15, respectively, will be postponed if the Adjusted Rent Commencement Date shall not occur on November 1, 2010, so as to reflect the actual respective anniversaries of the Adjusted Rent Commencement Date.*

6. **Termination Fees.** Paragraph 28 of the Lease is hereby amended to provide that Tenant shall pay to Landlord an amount equal to the sum of (a) the Unamortized Brokerage Commission, (b) the Unamortized Rent Abatement and (c) the Base Rent for the last month of the Extension Term, after giving effect to the termination effectuated pursuant to Paragraph 34 of the Lease. The Unamortized Brokerage Commission shall be the product of (i) the number of years (each such year being any period of twelve (12) calendar months) that would have been remaining in the Extension Term (had the Lease not been so terminated) multiplied by (ii) the sum of \$38,810.12. For example, if Tenant shall terminate this Lease pursuant to Paragraph 34 effective as of June 30, 2014, the Unamortized Brokerage Commission shall be \$77,620.24. If the effective date of such a termination of this Lease is not June 30, the amount specified in the preceding sentence shall be prorated accordingly. The Unamortized Rent Abatement shall be the quotient obtained by dividing (i) the product of (x) the number of months of Rent Abatement and (y) \$53,854.17 by (ii) the number of months during the portion of the Extension Term from the Adjusted Rent Commencement Date through and including June, 2016. Except as otherwise provided by County or State statute or regulation, a termination of the Lease pursuant to Paragraph 34 thereof shall not be "automatic" as a result of a failure of appropriation, but shall occur only upon full compliance by Tenant with the provisions of this Paragraph 6.

7. **Brokers.** Tenant and Landlord each represent and warrant to the other that they have had no dealings with any real estate broker or agent in connection with this Amendment, and each knows of no broker or agent, other than Jones Lang LaSalle, and Transwestern (collectively, the "Brokers") who may be entitled to a commission in connection herewith by virtue of this Amendment. Each shall indemnify and defend the other against, and hold the other harmless from, any and all claims, demands, losses, liabilities, law suits, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent other than the Brokers in connection with this Amendment; provided, however, that Landlord agrees to pay to the Brokers all commissions due them from Landlord in connection herewith, pursuant to separate agreements pertaining thereto.

8. **Notices.** Paragraph 35 of the Lease is hereby amended to delete Landlord and Tenant's respective addresses for notices and to substitute the following addresses in lieu thereof:

Address for Notices:

Landlord: 1335 PICCARD LLC
c/o Wellstone Properties
2228 Tackett's Mill Drive
Lake Ridge, VA. 22192

Tenant: Montgomery County, Department of General Services
Office of Real Estate
101 Monroe Street, 9th Floor
Rockville, Maryland 20850
Attn: Director of Real Estate

With a copy that does not constitute a notice:

Office of the County Attorney for Montgomery County
Maryland
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850
Attn: County Attorney

9. **Non-Discrimination.** Paragraph 31 of the Lease shall be amended to delete such paragraph in its entirety and insert the following in its place:

Landlord agrees to comply with the non-discrimination policies in County contracts as required by Section 11B-33 and Section 27 of the Montgomery County Code 2004, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. The Landlord assures the County that in accordance with applicable law; it does not, and agrees that it will not discriminate in any manner on the basis of race, color, religious creed, sex, martial status, national origin, ancestry, disability, sexual orientation or genetic status.

10. **Public Employment.** Paragraph 33 of the Lease shall be amended to delete such paragraph in its entirety and insert the following in its place:

Landlord understands that unless authorized under Chapter 19A and Section 11B-52 of the Montgomery County Code (2004), as amended, it is unlawful for any person transacting business with Montgomery County, Maryland, to employ a public employee for employment contemporaneous with his or her public employment.

11. **Reaffirmation of Terms.** Except as expressly modified herein, all of the terms, covenants and provisions of the Lease are hereby confirmed and ratified and shall remain unchanged and in full force and effect.

12. **Counterpart Copies.** This Amendment may be executed in two or more counterpart copies, via facsimile and/or hard copy, each of which shall be deemed an

original and all of which counterparts shall have the same force and effect as if the parties hereto had executed a single copy hereof. This Amendment shall not be deemed fully executed by Tenant until all three parties designed by name, title or office in Tenant's signature block below have both signed and dated their respective signatures.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed under seal as of the date first above written.

WITNESS:

By: _____

Print Name: _____

LANDLORD:

1335 PICCARD LLC

By: _____
Paulette J'Sen, Manager

Date Executed: _____

WITNESS:

By: Julie L White
Print Name: Julie L White

TENANT:

MONTGOMERY COUNTY, MARYLAND

By: Diane R. Schwartz Jones
Diane R. Schwartz Jones,
Assistant Chief Administrative Officer

Date Executed: _____

Approved as to Form and Legality:

Office of The County Attorney

By: Alexandra Thompson

Print Name: Alexandra Thompson

Title: Assistant County Atty

Date Executed: 10/27/10

Recommended:

Cynthia L. Brenneman
Cynthia L. Brenneman, Director
Office of Real Estate

Date Executed: 10/21/10

original and all of which counterparts shall have the same force and effect as if the parties hereto had executed a single copy hereof. This Amendment shall not be deemed fully executed by Tenant until all three parties designed by name, title or office in Tenant's signature block below have both signed and dated their respective signatures.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed under seal as of the date first above written.

WITNESS:

By: Barry R. Schenof
Print Name: Barry R. Schenof

WITNESS:

By: _____
Print Name: _____

Approved as to Form and Legality:

Office of The County Attorney

By: _____
Print Name: _____
Title: _____
Date Executed: _____

LANDLORD:

1335 PICCARD LLC

By: Paulette J. Sen
Paulette J' Sen, Manager

Date Executed: Oct 21, 2010

TENANT:

MONTGOMERY COUNTY, MARYLAND

By: _____
Diane R. Schwartz Jones,
Assistant Chief Administrative Officer
Date Executed: _____

Recommended:

Cynthia L. Brenneman, Director
Office of Real Estate

Date Executed: _____